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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of	)	
	)	
Amendment of Part 1 of the	)	WT Docket No. 97-82
Commission's Rules --	)	
Competitive Bidding Procedures	)	

To: The Commission

COMMENTS OF AMERICALL INTERNATIONAL, LLC

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February 6, 1998

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COMMENTS OF AMERICALL INTERNATIONAL, LLC

AmeriCall International, LLC ("AmeriCall") hereby submits its comments in the above-captioned proceeding, in connection with the Commission's Second Further Notice of Proposed Rulemaking, FCC 97-413, 1997 WL 797529 (December 31, 1997) ("Second Further Notice"). AmeriCall, a small business licensee, holds nine C block broadband PCS licenses covering approximately 2 million pops and six F block broadband PCS licenses covering approximately 1.6 million pops.

AmeriCall urges the Commission to:

- Adopt the "controlling interest" standard so as to remove artificial barriers to investment in entrepreneurs;
- Base installment payment interest rates upon the average yield established at Department of Treasury auctions of obligations, because the yield represents the true "cost of money" to the government; and
- Impose the same interest rate for all holders of authorizations for a spectrum block without regard to the timing of license grant to any particular licensee.

I. The FCC Should Adopt the "Controlling Interest" Standard

We commend the Commission for returning to the troublesome issue of attribution. See Second Further Notice, ¶ 185. AmeriCall strongly supports the "controlling interest" standard as a means of infusing the rules with greater clarity and certainty, consequently facilitating investment in auctioned services. We have consistently advocated elimination of the special ownership and voting requirements for C and F block institutional investors within a control group and nonattributable investors outside the control group.[1]/

If a licensee finds an "angel investor" willing to make a substantial investment in the carrier, especially in the current environment for wireless investment, AmeriCall believes it is critical to permit such investment provided it is passive. In our view, the passive nature of an investment is accurately reflected in the Commission's "controlling interest" standard.

We urge the Commission to replace the special entrepreneurs block ownership and voting limits with the "controlling interest" standard, so as to permit increased flow of capital into C and F block companies. Currently, many entrepreneurs must find three major contributors of equity capital, whereas non-entrepreneurs survive if they find only one large investor. The new standard will help place entrepreneurs on a level playing field with licensees in other spectrum blocks, because the entrepreneurs will not have to enforce unusual limits on investment. The standard will reduce impediments to small businesses' access to capital, and potentially lower the percentage of licenses that will be removed from public service by operation of the bankruptcy courts.

We also advocate that the Commission adopt an automatic presumption that the gross revenues and total assets of an investor meeting the definition of an "institutional investor" under the Commission's rules, e.g., 47 C.F.R. § 24.720(h), are not attributable. The same should hold true for any director elected by that investor, provided the investor does not elect a majority of the board. This "non-controlling institution" presumption could be adopted in addition to the "controlling interest" standard, or as an alternative. We find that investment companies and banks have neither the expertise nor the desire to operate telecommunications businesses; they tend to be the ideal "passive investors" or "passive directors," primarily interested in protecting their investment.[2]

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[1] / See, e.g., AmeriCall ex parte letter (August 11, 1997) (urging elimination of ceilings on nonattributable investment); AmeriCall Comments on Petitions for Reconsideration of the Second Report and Order, WT Docket No. 97-82, 62 Fed. Reg. 55,348, 1997 FCC LEXIS 5687 (October 16, 1997) (Second Report and Order), at 2, 7-8.

[2] / Noncontrolling investor approval rights over certain significant company actions for the purpose of investment protection have been long recognized as valid by the Commission. See, e.g., Fifth Memorandum Opinion and Order, PP Docket No. 93-253, 10 FCC Rcd 403, ¶¶ 81-82 (1994); In the Matter

In addition, we request that the Commission clarify the meaning of "principals of the applicant," Second Further Notice, ¶ 185.

Concerning a minimum equity requirement for persons or entities with control of the licensee, we agree that "an absence of equity would raise a question as to whether *de facto* control exists," Second Further Notice, ¶ 186. Should the Commission decide to impose a minimum equity requirement, we advocate clarification that the equity held by controlling persons or entities must equal or exceed 15 percent, to use the Commission's example, *cumulated and in the aggregate,* rather than on an individual basis. This is because the current "control group" of entrepreneurs' block licensees frequently consists of a management team of 10 or so officers who hold, on a cumulative and aggregated basis, 15 to 25 percent, or more, of the licensee's total equity. Should they *each* hold, e.g., 15 percent of the equity, no equity would remain for new, nonattributable investors, and in fact significant divestment would have to take place at virtually every entrepreneurs block company. We believe the Commission may have intended to specify that the controlling persons or entities must hold some minimum percentage of equity in the aggregate, on a cumulated basis. If this was the Commission's intent, we suggest that it be made more clear.

II. Interest Rates Should Be Based Upon Treasury Obligation Yields, And Should Be the Same for All Licensees for Any Particular Spectrum Block

The Commission asked whether, in the event installment payment programs are reinstated in future, interest rates on installment payments should be based upon the rate of U.S. Treasury obligations on the date of the close of the auction. Second Further Notice, ¶ 182.

First, we urge the Commission to level the playing field among licensees in any particular spectrum-based service by applying the same installment payment interest rate across the board, to all licensees for a particular spectrum block.

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of Applications of GWI PCS, Inc. For Authority to Construct and Operate Broadband PCS Systems Operating on Frequency Block C, DA 97-674, 1997 FCC LEXIS 1902 (Wireless Telecommunications Bureau 1997); Fox Television Stations, Inc., 10 FCC Rcd 8452, 77 RR 2d (P&F) 1043 (1995); Declaratory Ruling and Order, MCI Communications Corporation (MCI) and British Telecommunications plc (BT), 9

Secondly, we urge the Commission to reinterpret its rules so as to base the interest rates upon the *yield* of U.S. Treasury obligations on the date of the close of the auction. In our experience, lenders base the interest rate of a loan upon the yield, rather than the rate, of U.S. Treasury notes. In addition, the Commission has stated in adopting installment payment rules that "interest on installments should be charged at a rate no higher than the government's cost of money." See, e.g., Second Report and Order, PP Docket No. 93-253, 9 FCC Rcd 2348, 2390 (1994).

The "government's cost of money" for U.S. Treasury obligations is the yield on an obligation. When the federal government announces a sale of U.S. Treasury notes at auction, bids for the notes are accepted by the Bureau of the Public Debt. 31 C.F.R. § 356.20(a). Each bid states a "yield" which will be the actual rate of interest paid to the purchaser of the note on the amount of money borrowed, i.e., the actual price of the note, if the bid is ultimately accepted. 31 C.F.R. §§ 356-20(a), 356.2. The "yield" is defined by the Department of Treasury as "the annualized rate of return to maturity on a note or bond expressed as a percentage." 31 C.F.R. § 356.2. The yield reflects not only a fixed "coupon" rate of semiannual returns to investors,[3]/ but also any premium or discount from face value of the notes. The yield thus represents the actual cost of money to the government.[4]/

It is true that the government will pay purchasers of notes a fixed "coupon" rate. However, the coupon rate is set in relation to a discount or premium in light of the weighted average yield of the auction. See 31 C.F.R. § 356.20(b). The government will "pay" purchasers not only the coupon but also the difference in purchase

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FCC Rcd 3960, 75 RR 2d (P&F) 1024 (1994); News International, 97 FCC 2d 349, 357-66, 55 RR 2d (P&F) 945 (1984); Data Transmission Co., 44 FCC 2d 935 (1974).

[3] / The "coupon" rate would equal the actual rate of interest (the cost of money) only if the note was sold for face value, or "par," without a discount or premium, which would be exceedingly unusual.

[4] / The yield is the "actual, as distinct from the nominal, rate of return on an investment; the *effective rate.*" Eric L. Kohler, A Dictionary for Accountants 498 (5th ed. 1952).

price which reflects the discount or premium in note prices at auction due to changes in the aftermarket for bonds.

> The difference between the market price of a bond contract and the face amount – the discount or premium – is an adjustment of the interest revenue earned over the life of the contract since the bond will be redeemed at face value at maturity, barring financial insolvency of the issuer. The discount or premium is accumulated or amortized over the life of the contract to reflect more accurately the interest earned for each time period during which the bond is owned.

Sidney Davidson & Roman L. Weil, Handbook of Modern Accounting 14-10 – 14-11 (2d ed., McGraw-Hill 1977). The premium, when amortized and offset against the coupon payments, considered together, produce the yield. Thus, in the aggregate, the true "cost of money" to the government is the yield, and the word "rate" in Section 1.2110(e)(3)(I) should be interpreted to mean the yield of U.S. Treasury obligations at the time of licensing.

We also urge the Commission to avoid utilizing a reopened auction as the basis for the yield, especially where that auction is of notes that are not true 10-year (for example) notes, but rather are of notes with a shorter term (i.e., 9 years 11 months). Instead, if the Department of Treasury reopens an auction of old notes rather than holding an auction for new notes, the yield applied for Commission purposes will most accurately reflect market conditions for the Treasury obligations (and thus the actual cost of money to the government) at the time of the spectrum auction if the FCC waits for the next actual auction of new Treasury obligations to take place before establishing the interest rate for installment payments.

III. Conclusion

AmeriCall, a small business licensee, encourages the Commission to adopt the "controlling interest" standard, so as to beneficially reduce the impediments to small business access to capital.

AmeriCall also advocates that any future installment payment interest rates should be based upon the yield, rather than the rate, determined in an auction of

U.S. Treasury obligations. Finally, in our view, fundamental fairness would be served by applying the same interest rate to all licensees that won their licenses in a single spectrum block auction. That rate for all licensees should be the rate utilized for those licensees whose applications were not subject to petitions to deny.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Lisa Johnson, an administrative assistant in the office of AmeriCall International, LLC, do hereby certify under penalty of perjury that on this 6th day of February, 1998, the foregoing Comments were delivered by hand to the Secretary of the Federal Communications Commission and to the following persons:

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